

Notice of Allowability

Application No.

09/920,200

Examiner

Anthony Weier

Applicant(s)

BUNKE ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the transmittal filed 3/10/04.
2. ☒ The allowed claim(s) is/are 1-24.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
- ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
- ☒ Examiner's Amendment/Comment
- ☒ Examiner's Statement of Reasons for Allowance
- ☐ Other _____

Anthony Weier
Primary Examiner
Art Unit: 1761

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the Abstract, combine the three paragraphs into one paragraph by moving the beginning of the third paragraph to the end of the second paragraph and moving the beginning of the second paragraph to the end of the first paragraph.

Replace all references to "disclosed" with -shown- (i.e. lines 1, 4, 7, and 11).

Replace all references to "comprising" with -includes- (i.e. lines 2, 3, 5, 8, and 11).

Authorization for the following amendment was given in a telephone interview with Mr. Carl Roof on 6/1/04:

Cancel non-elected claims 12-23.

2. The following is an examiner's statement of reasons for allowance:

The prior art of record neither disclose nor teaches a composition for preparing a brewed coffee beverage wherein said composition comprises (1) roasted and ground coffee and (2) processed coffee grounds (PCGs) comprising greater than 2% by weight lipids. As set forth by the applicants arguments filed 3/10/04:

"Rizzi clearly does not suggest compositions containing R&G coffee in combination with PCGS having a lipid content greater than 2%. Indeed, the entire essence of Rizzi is the use of defatted coffee grounds. See, e.g., Col. 3, lines 36-38 and Col. 7, lines 36-39. Rizzi suggests that reduction of the lipid content to as close to zero as possible is preferred. As such, there is no motivation in Rizzi's teachings to combine the PCGS described in the present application with R&G coffee to make a composition for preparing brewed coffee beverages. Indeed, Rizzi clearly teaches away from the subject matter of Applicants' claims."

Furthermore, with respect to Katz, the examiner agrees with applicant's arguments filed 3/10/04:

"Indeed, it is important to recognize that... Applicants use the term "brewed coffee beverage" to describe the claimed compositions. With proper reference to the specification, this term is stated to refer to 'a liquid beverage that is intended for consumption without further processing, other than manipulation by the end consumer (e.g., addition of flavors, creams, sweeteners, or the like).' See page 4, lines 5-8 (emphasis added). Accordingly, while properly reading the claims in light of the specification, it is clear that the materials described by Katz are in no way related to a composition for preparing a brewed coffee beverage." In fact, to the extent Katz is interpreted to describe a 'composition comprising R&G coffee and PCGs,' that composition is clearly one that results in the formation of an extract that is subsequently processed into soluble or instant coffee.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

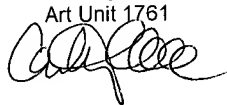
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier

Anthony Weier
Primary Examiner
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June 1, 2004